

# In the Supreme Court of the United States

OCTOBER TERM, 1946

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Nos. 596 and 44 Misc.

CECIL L. WRIGHT, PETITIONER

v.

JAMES A. JOHNSTON, WARDEN, UNITED STATES  
PENITENTIARY, ALCATRAZ, CALIFORNIA

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ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS  
AND ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT

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ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS  
AND ON MOTION FOR LEAVE TO FILE A PETITION FOR A  
WRIT OF HABEAS CORPUS

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## MEMORANDUM FOR THE RESPONDENT

These original proceedings in this Court are the most recent of numerous suits by petitioner seeking his release from federal imprisonment. Some of these suits are described in the Memorandum for Respondent in Opposition in *Wright v. Johnston*, No. 383, O. T. 1945, certiorari denied, January 7, 1946.<sup>1</sup> In the present proceedings petitioner seeks

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<sup>1</sup> As shown by the present petition for certiorari (p. 7), several other habeas corpus proceedings intervened between No. 383, *supra*, and the present proceedings.

the issuance of a writ of certiorari in order to bring before this Court the transcript of record before the Circuit Court of Appeals for the Ninth Circuit in *Johnston v. Wright*, No. 10331, 137 F. 2d 914, in which case that court on August 7, 1943, affirmed a judgment releasing him from federal imprisonment on a writ of habeas corpus on the ground that his federal sentences, which were directed to begin upon the expiration of a state sentence he was serving, had not yet begun to run because his release on parole by state authorities had not terminated the state sentence. Subsequent to this decision, in June 1944, petitioner was recommitted under his federal sentences after he had been finally discharged from parole custody by the state authorities. See Memorandum in Opposition in No. 383, at p. 3.

Petitioner concedes (see Pet. 8-9) that the present petition for a writ of certiorari (No. 596) should be dismissed as being made out of time, since the judgment of the Circuit Court of Appeals for the Ninth Circuit to which the petition for the writ is directed was entered in 1943. He merely seeks to have the record in that action brought before this Court for consideration in connection with his motion for leave to file an original petition for habeas corpus (No. 44 Misc.), in which he alleges that his present detention is illegal under the 1943 decision of the Ninth Circuit. However, the validity of petitioner's pres-

ent detention under the commitments issued by the convicting court in June 1944 was adjudicated in an earlier habeas corpus proceeding which culminated in the denial of certiorari in No. 383 at the last term and also on a prior motion to vacate the judgments of conviction which was denied by the convicting court. As we pointed out in our Memorandum in Opposition in No. 383, petitioner's detention is not open to question. Hence, there is no occasion for the exercise of this Court's discretionary power to issue a writ of habeas corpus in aid of its appellate jurisdiction. See *Ex parte Abernathy*, 320 U. S. 219, and cases cited.

Respectfully submitted.

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NOVEMBER 1946.